

OCT 18 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTORIANO SOSA PEDROZA; et al.,

Petitioners,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 07-70038

Agency Nos. A95-293-939
A95-293-940

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 10, 2007***

Before: PREGERSON, THOMAS and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

This is a petition for review of the Board of Immigration Appeals' ("BIA") order dismissing petitioners' appeal as moot because the appeal appeared to have been abandoned.

We have reviewed the record and petitioners' response to the court's June 12, 2007 order to show cause, and we conclude that the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Petitioners' response to the order to show cause does not raise any legal or constitutional claims regarding the BIA's dismissal of petitioners' appeal as moot. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004). Petitioners have not rebutted the BIA's conclusion that they had abandoned their appeal. *See Toquero v. INS*, 956 F.2d 193, 196 (9th Cir. 1992) (holding that where the petitioner was on notice that if the petitioner failed to file a brief after indicating that he would do so, the BIA could reasonably assume that petitioner had abandoned the appeal and exercise its power to summarily dismiss the appeal).

Accordingly, this petition for review is denied.

PETITION FOR REVIEW DENIED.

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PREGERSON, Circuit Judge, dissenting:

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I dissent. This case, and the 60 others like it filed today, will have an adverse effect on children born in the United States whose parent/parents are illegal immigrants. When a parent is denied cancellation of removal, the government effectively deports the United States-born children of that parent. This unconscionable result violates due process by forcing children either to suffer de facto expulsion from the country of their birth or forego their constitutionally-protected right to remain in this country with their family intact. *See, e.g., Moore v. City of East Cleveland*, 431 U.S. 494, 503-05 (1977) (“Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this nation’s history and tradition.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (recognizing that “[t]he integrity of the family unit has found protection in the Due Process Clause of the 14th Amendment”).

Furthermore, as a nation we should recognize that many who came here illegally and many children born of illegal immigrants serve and have served with honor and distinction in our military forces, and many have laid down their lives on the altar of freedom.

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As I have said before, “I pray that soon the good men and women in our Congress will ameliorate the plight of families like the [petitioners] and give us humane laws that will not cause the disintegration of such families.” *Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006, 1015 (9th Cir. 2005).